

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

REMBRANDT DATA TECHNOLOGIES, LP,)	
)	
)	
Plaintiff,)	Civil Action No. 1:08-cv-1009 GBL/IDD
)	
)	
v.)	PUBLIC VERSION
)	
)	
)	
)	
AOL, LLC; CAVALIER TELEPHONE, LLC;)	
THE BRINK'S COMPANY; BRINK'S HOME)	
SECURITY, INC.; ADT SECURITY)	
SERVICES, INC.; DIRECTV, INC.;)	
HEWLETT-PACKARD COMPANY; CANON)	
U.S.A., INC.; CANON BUSINESS)	
SOLUTIONS, INC. and CANON)	
INFORMATION TECHNOLOGY SERVICES,)	
INC.)	
Defendants.)	

**HEWLETT-PACKARD COMPANY'S MOTION TO EXCLUDE THE TESTIMONY OF
PLAINTIFF'S DAMAGES EXPERT CHRISTOPHER BOKHART**

Pursuant to Fed. R. Civ. P. 26(a)(2)(C) and 37(c)(1), and Paragraph 4 of the Court's Scheduling Order dated December 10, 2008 (as amended by the Court's Order of April 10, 2009), Defendant Hewlett-Packard Company ("HP") hereby moves to exclude Plaintiff's putative damages expert, Christopher Bokhart, from offering expert testimony at trial in this matter.

As grounds for this motion, HP states first that Mr. Bokhart's damages opinion in this case is unsound and will not assist the trier of fact in determining a reasonable royalty rate for the dial-up modem chips allegedly infringing the patents in suit. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Precedent is clear that a patentee is only entitled to the value of its patented component, and the one exception to that principle – the entire market value rule – is inapplicable here. [REDACTED]

[REDACTED]

[REDACTED]

Second, if this Court does not exclude all of Mr. Bokhart's testimony, it should at a minimum exclude him from testifying concerning alleged damages prior to the date that the lawsuit was filed in this action. Mr. Bokhart's testimony on that subject has no basis in fact, as Rembrandt has come forward with no evidence that any owner or licensee of the patents in suit has ever marked its products in accordance with 35 U.S.C. § 287(a), and [REDACTED]

[REDACTED]

[REDACTED] Accordingly, as a matter of law there is no basis for damages prior to the date of filing (September 26, 2008), and Mr. Bokhart's testimony on this subject would not assist the jury to understand any fact in contention, the standard of Federal Rule of Evidence 702.

Wherefore, for the foregoing reasons and those contained in the accompanying memorandum in support, this Court should exclude plaintiff's damages expert Mr. Bokhart from testifying, either altogether based on his unsound methodology or with respect to pre-lawsuit damages based on Rembrandt's inability to prove marking or actual notice of infringement.

Dated: May 5, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2009, I served the foregoing **PUBLIC VERSION OF DEFENDANT HEWLETT PACKARD COMPANY'S MOTION TO EXCLUDE THE TESTIMONY OF PLAINTIFF'S DAMAGES EXPERT CHRISTOPHER BOKHART**, via email and ECF electronic filing to the following:

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